IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Revision : 139 of 2004
Decided on : 05.03.2011

Sonu Chaudhary …Petitioner

Versus

State of Himachal Pradesh …Respondent.

Coram

The Hon'ble Mr. Justice V.K. Sharma, Judge.

Whether approved for reporting? [1] ***Yes.***

For the Petitioner : Mr. Vivek Singh, Advocate.

For the respondent : Mr. J.S. Guleria, Asstt. Advocate General.

V.K. Sharma, Judge (oral).

The present revision petition is directed against the judgment dated 4.8.2004, of the learned Addl. Sessions Judge (I), Kangra at Dharamshala, H.P, affirming the conviction and consequent sentence of two months and fine of ₹ 500/- and in default further simple imprisonment for one month on each count, imposed upon the petitioner herein, who was arrayed as accused before the learned trial Court for the offences under Sections 279, 337 and 338 of the Indian Penal Code (IPC), vide judgment dated 3.8.2003, passed by the learned Judicial Magistrate 1st Class, (I), Dharamshala.

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[1] *Whether reporters of the local papers may be allowed to see the judgment? Yes.*

2. In brief, the prosecution case was that on 28.2.2003, at about 5.30 PM, PW-1 Deep Kumar along with PW-2 Rajesh Kumar, was going on his motorcycle No. HP-40-4479 to Gaggal. The motorcycle was being driven by PW-1 Deep Kumar and PW-2 Rajesh Kumar was pillion rider. It is alleged that when the motorcycle reached Ladhwara, the accused who had parked his van bearing registration No. HP-39A-0963 on the road side, suddenly reversed the same in a rash and negligent manner and hit the motorcycle, as a result, both the riders fell down on the road and sustained injuries. They were taken to the hospital for treatment by the accused himself.

3. The case was investigated by the police, which came to the conclusion that the aforesaid offences were established against the accused. Accordingly, he was challaned and sent up to face trial. On being charged, he pleaded not guilty and claimed trial. The prosecution evidence followed. In all, 10 witnesses were examined by the prosecution. On close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C, wherein, the defence raised by him was that he was reversing the van on his own correct side of the road and the motorcyclist had hit the van from behind and was himself at fault. However, in defence, no evidence was led. After hearing the parties, the learned trial court proceeded to convict and sentence the accused, as already noticed. Being aggrieved, the accused carried the matter in appeal to the first appellate

court, but without success. It is how he is before this Court by way of the present revision petition.

4. I have heard the learned counsel for the petitioner-accused, learned Assistant Advocate General for the respondent-State and gone through the record.

5. It is contended on behalf of the accused that both the learned courts below have mis-read the evidence leading to incorrect inferences not warranted by law. To the contrary, the learned Assistant Advocate General has supported the judgments of the learned courts below. According to him, this court has a very limited jurisdiction on revisional side and the evidence which has been appreciated by the courts below in right perspective cannot be re-appreciated by this court in revision.

6. The revisional jurisdiction under Section 397 Cr.P.C empowers the court to satisfy itself as to the "correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court". In order to undertake such an exercise the evidence is necessarily required to be looked into and evaluated to adjudge the correctness, legality or propriety of any finding, sentence or order under challenge. I proceed to appreciate the respective contentions on behalf of the parties against this backdrop.

7. The accident is admitted. The only controversy between the parties is as to whether who was responsible for

the same. Whereas, according to the prosecution, the fault lies with the accused, the latter has pleaded that he was innocent and instead PW-1 Deep Kumar was himself at fault, as he had struck the motorcycle against the van, which he was reversing in normal speed on his own correct side of the road. True it is that the evidence cannot be scanned by this court in exercise of its revisional jurisdiction to arrive at a conclusion different to that of the learned courts below, yet three aspects of the matter emerging out of the record cannot be lightly over looked, as the same go to the very root of the case.

7. Firstly, it is admitted by PW-1 Deep Kumar that the van was being reversed. At that time the motorcycle was about two meters behind the van. Thus, it is apparent that he had seen the van being reversed and in the absence of any allegation that there were other vehicles on the road at that time, the motorcycle rider could have very well stopped the motorcycle by applying brakes or could have avoided the van, which was being reversed and thus accident itself could have been avoided. In this regard, another aspect which assumes significance is that no skid marks were found by the Investigating Officer on the spot, meaning thereby that brakes were not applied by the motorcyclist.

8. Secondly, PW-1 Deep Kumar has also admitted that it was a newly purchased motorcycle and he was not having driving licence. This aspect can also not be lightly over looked for the reason that a person who was not holding even a learner's

licence, was driving the motorcycle on a busy highway and that too along with a pillion rider without taking requisite precaution to avoid any accident.

9. Thirdly, admittedly it was the accused who had taken both injured to the hospital for treatment. This is pointer towards his act, conduct and bona fides . Furthermore, there is no other independent evidence as to the occurrence, except the motorcyclist and the pillion rider.

10. On a combined and harmonious reading of the statement of PW-10 Shri Balbir Singh, it emerges that though he was not an eye witness to the accident, yet he has admitted during cross examination that when he reached the spot, he came to know that the accident had occurred due to the fault of the motorcyclist.

10. In view of the above, I have no hesitation to conclude that the findings returned by the courts below cannot be said to be correct and legal and thus are liable to be reversed. Consequently, the revision petition is accepted and the impugned judgments dated 30.08.2003 and 04.08.2004, are set aside and the accused acquitted of the charge framed against him.

(V.K.Sharma)
Judge.

March 5, 2011.
Lsp*